A CONSOLIDATION OF 50 YEARS OF LEGAL WRITING, BY WILBUR F. BOWKER (1933-1988) by Marjorie M. Bowker (ed.) (Edmonton: Faculty of Law, University of Alberta, 1989, ISBN 0-88864-210-5) pp. 797.

I am grateful for the fact that the function of a reviewer is to describe the book so that those using the review can decide whether they should read it for themselves. I am grateful, because I might have otherwise declined this opportunity on the grounds that the respectful affection I hold for Wilbur Bowker might be thought to cloud my objectivity.

Yet it must be said that this collection of 50 years of legal writing tells much about an author whose humility and modesty precludes him from ever saying anything that could be construed as personal aggrandizement.

Fortunately the collection includes, as an appendix, the superb appreciation of the author given by Professor D. Trevor Anderson, recently the Dean of Law at the University of Manitoba. That tribute cannot be adequately summarized but I take from his "essence of the man" after marking the subject's deep humility and modesty his description of "the quiet, dependable, dedicated, ethical type of builder." Wilbur Bowker is that kind of writer.

In his introduction, the Honourable Ronald Martland makes the point that all the writings are "written in a clear style, without prolixity, and the subjects are dealt with in a logical, orderly manner with a positive statement of the writer's views."

This book is the result of the efforts of Dean Wilbur Bowker's wife, the former Judge Marjorie Bowker, to compile his writings which extend over a period of five decades. Some of these have not been previously published, and many are in sources not readily available. Consolidations of writings ordinarily suffer greatly from the fact that the earlier ones have become outdated and even outmoded. Judge Bowker has wisely decided against attempting to edit or update these works. She was right in that decision because one of the tests of sound writing is to see how well it has stood the test of time. Are the analyses still relevant? Have events been soundly forecast? The short answer is yes.

A review of the table of contents shows no unifying theme. The presentation is chronological. The subjects, which reflect both a variety of teaching responsibilities and a breadth of interests, run from procedure in divorce actions in Alberta in 1938 and a book review of Paton's *Textbook of Jurisprudence* immediately following the second world war, to a recent graduating class speech "Metaphors and Other Notable Passages in Judgments".

There are three interests that are particularly well illustrated and recur. The first is a profound interest in history, particularly the history of the western Canadian legal profession. The principal historical writings are: major article on the Honourable Horace Harvey, a study of George H. Steer's 55 years in the Alberta Bar, a commentary on three Alberta judges, a study of the *Sproule* case "Bloodshed at Kootenay Lake", a paper on "Stipendiary Magistrates and the Supreme Court of the Northwest Territories", and "A

Lighthearted View of the History and Traditions of the Legal Profession of Alberta". The 1978 dinner speech to the Canadian Institute for the Administration of Justice: "Expeditious Justice: Western Style" is a, hitherto unpublished, thoroughly entertaining, and informative presentation.

A second major interest is in the areas of "Professional Responsibility" or "Ethics". As a teacher Wilbur Bowker taught this subject "interstitially" and he does the same in this book. While there are express discussions of "Professional Ethics", "The Professional Responsibility of the Lawyer" and "The Ethical Issues in the Allocation of Health Care Resources", the subject is not far below the surface in other works. In 1955, long before Watergate, he thought it might be profitable to introduce a formal course in ethics.

He also reminds us of the nature of a profession and the importance of the characteristic of "service" in traditional definitions.

A third recurring theme is "civil liberties". At a time when this subject was not thought to be a respectable component of the Canadian law school curriculum, Wilbur Bowker had developed an interest in the area.

In 1959 he published "Basic Rights and Freedoms: What Are They", an analysis of the rights and freedoms which Canadians expect Parliaments to respect. He discusses the nature of those "rights" and "freedoms" and displays considerable scepticism about the wisdom of relying on the courts to preserve rights "if the people and their legislatures have abdicated their responsibility".

On more than one occasion he quotes Judge Learned Hand "that a society so riven that the spirit of moderation is gone, no court *can* save; that a society where the spirit flourishes no court *need* save; that a society which evades its responsibility by thrusting upon courts the nurture of that spirit, that spirit in the end will perish." Commentators who see a tendency of legislatures to evade their responsibility by leaving interpretation of fundamental questions to courts in deliberately ambiguous language, might well applaud. In his comments on the need for a democracy to rely on its elected representatives he quotes Max Lerner's brief comment "scratch a fervent believer in judicial supremacy and like as not you will find someone with a bitterness about democracy". Need these things not be said today? His 1956 "convenient grouping" of rights and freedoms would look reasonable and familiar to anyone studying new bills of rights. He warns of the risks of extreme positions. He says this "the accused claims a fair trial; the paper successfully claims a right to publish lurid and prejudicial accounts. Sins, if not crimes are still committed in the name of 'liberty'."

At the same time, Bowker illustrates the ease with which majorities can trample individual rights and freedoms and speaks strongly of some of the examples spawned in war time Canada.

He laid down a test for the application of anti-discrimination legislation: "can a member of a race that suffers discrimination justifiably ask society through its branches of government to take steps to protect him from the hurt he suffers through refusal by

persons of business or trade to treat him the same as anyone else? In my opinion, the answer is yes; and all that is left is the way the victims claim against the person who would discriminate and ask the next question which of the conflicting aims should prevail on our society?"

Other writings touch upon a variety of topics: evidence, succession, dower, limitations, law research and reform, and medical issues such as experimentation, tissue gifts, sterilization, and confidentiality.

I hasten to point out that these are not all the writings of Wilbur Bowker. These are the ones that he prepared or produced in his own name. He has been the principal author of many classroom lectures and a good many working papers and reports on law reform. These are not included within the volume. The reasons for their exclusion are practical and, in the end result, correct. What we have here displays his own views, his own style, his own convictions.

One of the principal advantages of a collection of this kind is an opportunity to observe the style and technique of a writer. Wilbur Bowker's style is spare and above all "clear". What he says is not elementary, but is cast in the clearest form that he can employ. Clear writing is not easy work. In his 1976 speech, Dean Anderson notes the qualities of plainness of style based on deep analysis, added to which is a positive tone.

Since it is expected of a reviewer to offer any criticisms which may be of interest to the reader, I do so. I note, however, a point illustrated and explained in the book itself, that it is not the function of a reviewer to make niggardly criticisms or attempt to display his own erudition. There is a delightful episode in which Wilbur Bowker, reviewing the first edition of Paton, wrote the author a separate letter cataloguing a number of errors which he thought should be drawn to the author's attention. Paton expressed his gratitude for this civilized form of reviewing.

The deficiencies or criticisms are those of any compilation: namely, that events have made some writings of limited interest: the article on divorce practice is an example. The review of the law of evidence would need updating. Yet, in his comment on the law of evidence Bowker says "it seems to the writer that the rule in *Hodges* is merely an elaborate way of restating the rule as to reasonable doubt." He then went on to note that the rule had become "sanctified". His comment now represents the current thinking in both Canada and the United Kingdom. As any good law reformer knows (a subject of other included essays) research precedes reform - it is difficult to talk about progress unless we know our starting point. His paper on intestate succession, for example, goes back to look at Anglo Saxon wills.

In a comment on extra-judicial writing, Wilbur Bowker refers to the English writer or scholar who, noticing that the postwar Law Quarterly had shrunk to practically nothing while there was a proliferation of articles from the United States said "what American legal writing needs most is a paper shortage". Wilbur Bowker would be a hero to that commentator. No words are wasted on these pages. Readers of this book will be grateful for the fact that the Alberta Law Foundation and the Faculty of Law found enough paper

to publish this compilation, which tells us much about law, history, and the work of one dedicated, ethical builder of the legal profession.

The Honourable
Wm. A. Stevenson
Puisne Judge,
Supreme Court of Canada